
Part A – Introduction

1. About this document

- (a) These are Aatrox's Customer Terms.
- (b) When we supply you with Telco Products, our Customer Terms apply by agreement between us.
- (c) When we supply you with non-Telco Products, these Customer Terms apply as our standard terms of business.

2. When these Customer Terms start

The Start Date is 01/01/2020. These Customer Terms apply to:

- (a) all Service Agreements that are first made, or are renewed; and
- (b) all month-to-month (or other periodical) Service Agreements that roll over to a new month (or other period) –

after midnight at the start of the Start Date. Otherwise, Service Agreements that pre-date the Start Date continue on their existing terms.

3. About us

- (a) Aatrox or 'we' means Aatrox Communications (New Zealand) Limited NZBN9429 0478 8167 9.
- (b) Our website is at <https://aatroxcommunications.co.nz/>
- (c) Our postal address is at Level 1, Building D, 17 Corinthian Drive, Albany, Auckland 0632.
- (d) Our customer service number is (09) 242 0880.

Part B – Customer Contracts

4. Your Customer Contract

We supply Services under a Customer Contract that includes:

- (a) this Part B;
- (b) the General Terms in Part C (and any policies incorporated by reference therein); and
- (c) any Service Schedule for the Service.

Service Schedules for our main Services are attached.

5. Plans

- (a) Many Services are available under different Plans, each with its own features, entitlements, contract period, Charges and special conditions.
- (b) Your Customer Contract also includes the terms of any Plan you select.

6. Priority

If there is any conflict between the parts of your Customer Contract, the priority (from highest to lowest) is:

- (a) clauses 36 to 41 in Part C;
- (b) the terms of any Plan you select;
- (c) any Service Schedule for the Service;
- (d) this Part B;
- (e) the remainder of Part C; and
- (f) any policies incorporated into a Customer Contract by reference (e.g. Fair Use Policy, Acceptable Use Policy or Privacy Policy.)

7. Peak & Off-peak

- (a) Your Customer Contract may specify certain days and/or times as Peak or Off-peak.
- (b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. Your Customer Contract will indicate how that works in each case.

8. Periodic Entitlements

- (a) A Plan may include the right to use a certain amount of a Service during a certain period. We call these Periodic Entitlements.
 - (i) eg An Internet Plan might let you download 10 TB of data each month at no extra cost.
 - (ii) eg A local call Plan might let you make 200 local calls each month at no extra cost.
- (b) Unused Periodic Entitlements do not carry forward and are not redeemable for cash or other credit.
- (c) If you exceed your Periodic Entitlement, extra Charges may apply or a Service may be limited in some way. Your Plan will give details.

9. Prepaid Plans

For a Prepaid Plan:

- (a) Prepayments are not redeemable for cash or other credit.
- (b) The Plan may specify a Use-by Date ie a period after which any prepaid entitlements that are not used expire without refund. Unless a Plan specifies otherwise, a Use-By Date of one year applies to all Prepaid Plans.
- (c) Prepayments are not transferable between Plans – if you change Plans, there is no credit for unused prepaid entitlements (unless the Plan states otherwise).
- (d) We may specify minimum and/or maximum prepayments that you may make.
- (e) When your prepaid entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

10. Non-Prepaid Plans

For a Plan that is not a Prepaid Plan, you may use the Service without paying in advance in full, but:

- (a) We may require partial prepayment for a period of Service.
- (b) We may require a partial prepayment before or after your Service Start Date.
- (c) We may require you to maintain a minimum prepaid balance for a Service.
- (d) We may vary the amount of a required prepayment or minimum prepaid balance from time to time.
- (e) We may apply your prepaid balance to your next Bill or any later Bill/s.

11. Acceptable and Fair Use Policies

- (a) We may publish an Acceptable Use Policy and/or a Fair Use Policy for a Service or Plan.
- (b) An Acceptable Use Policy or Fair Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service and/or our resources.
- (c) You must comply with an applicable Acceptable Use Policy or Fair Use Policy. For additional information regarding our Acceptable Use Policies, please visit our website (see clause 3) or alternatively to obtain a copy of the applicable policy – write to our Customer Information and Compliance Officer at our postal address (see clause 3).

12. Legal Compliance Policies

- (a) We may publish a policy directed to ensuring that the use of a Service complies with all Laws.
- (b) You must comply with such a policy.

13. Interacting with our staff

- (a) You must deal with our staff courteously.
- (b) You must not be rude to our staff.
- (c) You must not harass or mislead our staff.
- (d) If you breach this clause in a serious way, or on more than one occasion:
 - (i) we may make a written request that you comply with it; and
 - (ii) if you breach it again, you are in material breach of your Customer Contract.

14. Operational Directions

- (a) Acting reasonably, we may give Operational Directions about a Service.
- (b) Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when reasonably necessary.
- (c) You must comply with an applicable Operational Direction.

15. Partner Requirements – General

- (a) Telco services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- (b) Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Services to you subject to such Partner Requirements.
- (c) You must comply with applicable Partner Requirements we notify.
- (d) Where a Partner Requirement states that a Partner has a certain right or power:
 - (i) the Partner itself may exercise that right or power; or
 - (ii) we may exercise the right or power on behalf of the Partner.

If a new or amended Partner Requirement is detrimental to you, you will have Walk Away Rights under clause 44.

16. Fixed terms

A Plan may specify a fixed or minimum term. If it does:

- (a) A Customer Contract for the Plan is a contract for at least that specified term. We or you can terminate it with effect from the end of the fixed or minimum term on at least 30 days' notice to the other.
- (b) If a Customer Contract is not terminated under clause 16(a), it becomes a month-to-month Contract.

17. Month-to-month, casual or 'no contract' terms

If a Plan or Customer Contract is described as 'month-to-month', 'casual', 'no contract' or similar:

- (a) we may terminate it on at least 30 days' notice; and
- (b) you may terminate it on at least 30 days' notice, taking effect at the end of a Billing Period (eg if you give notice on 26 March, your Customer Contract ends on 30 April next).

18. Consumer Guarantees

- (a) If you are acquiring the Services for the purposes of a business (as opposed to as a consumer, as defined in section 2 of the Consumer Guarantees Act), you acknowledge that that the Consumer Guarantees Act has no application to your Customer Contract or the supply of the Services.
- (b) Under the Consumer Guarantees Act, consumers (as defined in section 2 of the Consumer Guarantees Act) have the benefit of certain Consumer Guarantees:
 - (i) that cannot be excluded; and
 - (ii) where the consumer's rights in case of breach cannot be limited by your Customer Contract, or can only be limited to a certain extent.

Your Customer Contract never operates to exclude the Consumer Guarantees (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

19. Fair Trading Act 1986

Where it is fair and reasonable to do so, the parties confirm:

- (a) that they are acting in trade in relation to the transactions contemplated by your Customer Contract; and
- (b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 shall not apply in relation to your Customer Contract or as between the parties.

20. Understanding and navigating our Customer Terms

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 93.
- (b) Rules for interpreting other expressions in our Customer Terms are set out in clause 92.
- (c) The Index is at the end.

Part C – General Terms

21. Application for Service

- (a) You must comply with any application form or process we specify.
- (b) All information you provide in connection with an application must be true, correct, complete and not misleading.

22. Processing an application

- (a) We do not have to accept an application.
- (b) Before we confirm that we can and will provide Service, if you take any step (eg terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.

23. Relevant dates

- (a) The date when you make an application is the **Application Date**.
- (b) The date when we confirm that we can and will provide Service is the **Contract Date**.
- (c) The date when we notify you that Service is available for use (or the date you first use the Service, if that is earlier) is the **Service Start Date**.

24. Providing Service

- (a) We will commence Service as soon as reasonably practicable after the Contract Date, and we may commence billing you as soon as the Service is provisioned.
- (b) We may provide Service using Our Facilities and/or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities our Network.

25. Use of Service by others

- (a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.

- (b) Anyone who makes use of a Service with your consent or from your Service Address or using your equipment or log-in credentials is counted as your End User.
- (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
- (d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.

26. End User Data

Each party agrees comply with its obligations under the Privacy Act and all applicable Laws regarding the use and protection of personal information (as that term is defined in the Privacy Act) collected, stored, processed or disclosed in connection with any Customer Contract.

26.1 Use of End User Data

- (a) Aatrox will process all End User Data in accordance with the terms of Aatrox's Privacy Policy.
- (b) Aatrox may only use End User Data collected or accessed in connection with your Customer Contract to the extent necessary to provide the Services, perform its obligations, or exercise its rights under any Customer Contract or as otherwise required or permitted by Law.
- (c) Aatrox will not disclose End User Data to any third party without your consent, unless such disclosure is required by Law or is otherwise authorised in accordance with the terms of your Customer Contract, provided that Aatrox may disclose End User Data to its Partners and Wholesale Suppliers where required in connection with the provision of the Services.

26.2 Your obligations in relation to End User Data

- (a) You must ensure that End Users consent to Aatrox collecting, storing, disclosing and using End Users personal information (as that term is defined in the Privacy Act) as contemplated under the terms of your Customer Contract.
- (b) You will indemnify Aatrox against any and all losses, liabilities, claims, costs and expenses (including legal expenses) arising out of or in connection with any claim by an End User that Aatrox's use of End User Data as permitted by, and in accordance with, the terms of your Customer Contract constitutes a breach of the Privacy Act.

27. Using a Service

- (a) When using a Service, you must comply with:
 - (i) your Customer Contract (including any applicable Acceptable Use Policy or Fair Use Policy); and
 - (ii) all Laws.

- (b) You must not use a Service:
- (i) in breach of any Law;
 - (ii) to breach anyone else's rights;
 - (iii) to infringe copyright;
 - (iv) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute;
 - (v) to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;
 - (vi) to send, allow to be sent, or assist in the sending of an Unsolicited Commercial Electronic Message, to use or distribute email harvesting software, or otherwise breach the UEMA;
 - (vii) in a way that is misleading or deceptive, where that is contrary to Law;
 - (viii) in a way that results, or is likely to result, in damage to property or injury to any person; or
 - (ix) in any way that damages or interferes with our Services to our other customers, our Partners or any Facilities, or exposes us to liability.

28. Exploitative Use

- (a) 'Exploitative Use' means:
- (i) using an unlimited mobile telephone Service to generate mobile terminating access or SMS message terminating access payments (for example, by using SIM boxing);
 - (ii) using a Service to transit, refile or aggregate domestic or international traffic on Our Network;
 - (iii) using a Service with devices that switch or reroute calls to or from Our Network without our consent;
 - (iv) using a Service in a manner similar to the kinds described in clauses 28(a)(i), (ii) or (iii); or
 - (v) any other use of a Service in a manner that cannot reasonably be considered to be within the range of uses for which the Service are ordinarily supplied – provided that use of a Service is not Exploitative Use merely because it is high volume use.
- (b) You must not engage in Exploitative Use.

29. Telephone numbers

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) We must comply with the Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.
- (c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.
- (d) You must not:
 - (i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it; or
 - (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Customer Contract ends.

30. IP addresses, email addresses and domain names

- (a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.
- (b) These Internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- (c) We are not responsible for anything done, or required to be done, by these authorities.
- (d) You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your Customer Contract ends.
- (e) An IP address allocated to you:
 - (i) may be managed using Network Address Translation (**NAT**);
 - (ii) may not be 'globally routable' ie directly reachable by all other Internet users; and
 - (iii) may therefore not support applications or services that require inbound connections to be established (eg a Virtual Private Network).

This reflects common industry architecture and is not a defect in your Service.
- (f) We may allocate you with a globally routable IP address, if you request it or applicable Service Terms provide for it, subject to:

- (i) availability;
- (ii) Service Terms;
- (iii) our current allocation policy at the time of request; and
- (iv) payment of an additional Charge.

31. Dynamic IP addresses

- (a) Unless your Internet Service specifies that we shall provide you with a static (ie non-changing) IP address, we may provide it using dynamic IP addresses (that change periodically).
- (b) The periodic changing of dynamic IP addresses is normal network behaviour and not a fault.
- (c) It may be difficult or impossible to operate an Internet server (eg a mail server or a web server) using an Internet Service with a dynamic IP address. If you intend to operate such a server you should use an Internet Service with a static IP address.

32. Delivery of Equipment

- (a) This clause applies if we sell Equipment to you.
- (b) We will try to deliver Equipment sold to you on the delivery date (Delivery Date) and at the address (Site) indicated on your Application during normal business hours in that area.
- (c) Variations at your request to Delivery Date or Site:
 - (i) are at our discretion;
 - (ii) may be subject to conditions, including extra Charges; and
 - (iii) may be delayed due to circumstances beyond our control, for which we cannot be liable.
- (d) You assume all risk in the Equipment from the time of delivery on the Delivery Date. Title to Equipment will transfer to you upon payment.
- (e) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- (f) If you use in connection with a Service any Equipment we have not approved or provided:
 - (i) it must comply with all applicable Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
 - (ii) you are responsible for ascertaining what those technical standards and requirements are, since we will not be familiar with the Equipment; and

- (iii) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
 - (AA) our negligence, or
 - (BB) our breach of the Consumer Guarantees.
- (g) Substituted Equipment:
 - (i) On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may supply substitute Equipment that is substantially equivalent to the advertised Equipment.
 - (ii) On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may supply substitute or modified Equipment that is more suitable.

33. Installation and connection of Equipment

- (a) This clause only applies if we expressly agree to install or connect Equipment we have sold to you.
- (b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
 - (i) appropriate electricity supply;
 - (ii) appropriate electrical and mechanical fittings;
 - (iii) appropriate environmental conditions;
 - (iv) a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
 - (v) all necessary facilities for the location of the Equipment;
 - (vi) access to all necessary personnel including your technical personnel;
 - (vii) where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- (d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- (e) You must indemnify us against any Claim made against us, or Loss incurred by us (including legal costs on a full indemnity basis) in connection with such entry and

installation, except to the extent that we caused or contributed to the Claim or Loss by our negligence, breach of any Law or breach of your Customer Contract.

- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

34. Installation Charges

- (a) We will charge you installation Charges as stated in (or indicated by) your Customer Contract.
- (b) We will try to inform you in advance of any installation fees that may be charged by our Partners.
- (c) If we find that installation will be more costly because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to revised Charges.

35. Additional Equipment services

- (a) You may ask us to supply additional services in relation to Equipment we have sold to you eg repairs.
- (b) If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Partners at rates they determine).

36. Service Level Agreements

If a Service or a Plan includes a Service Level Agreement (SLA):

- (a) we are liable for any remedy or rebate specified by the SLA; and
- (b) subject to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

37. Exclusion of implied terms

Important consumer information: Nothing in this clause 37 affects any rights you have under the Consumer Guarantees Act, except if you are using the Services for the purposes of a business (as opposed to as a consumer, as defined in section 2 of the Consumer Guarantees Act), then you acknowledge that the Consumer Guarantees Act does not apply. Subject to clauses 36 and 37:

- (a) Any representation, warranty, condition or undertaking (whether in favour of you or of us) that would be implied in your Customer Contract by legislation, common law,

equity, trade custom or usage or otherwise is excluded from your Customer Contract to the fullest extent permitted by law.

- (b) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.

38. Limitation of liability – General

Important consumer information: Nothing in this clause 38 affects any rights you have under the Consumer Guarantees Act, except if you are using the Services for the purposes of a business (as opposed to as a consumer, as defined in section 2 of the Consumer Guarantees Act), then you acknowledge that the Consumer Guarantees Act does not apply.

- (a) Subject to clauses 36, 37 and 39, we are never liable to you for, and you release us from any Claim for, any Loss.
- (b) If you are acquiring the Services as a consumer (as defined in section 2 of the Consumer Guarantees Act), then this clause 38 will not apply but, to the fullest extent permitted by law:
 - (i) Neither of us is liable to the other for economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or contracts, anticipated savings, loss of profits, loss of data, indirect or consequential loss, an obligation to indemnify another person, or an obligation to contribute to the compensation of loss or damage suffered by another person.
 - (ii) Except for liability under clauses 39(a) or (b), 40 or 41 the liability of each of us to the other for any Loss is limited to \$50,000.

39. Liability – General

- (a) You must pay us all Charges and other amounts due under your Customer Contract.
- (b) You must indemnify us for any Loss we suffer as a result of or in connection with:
 - (i) your breach of your Customer Contract;
 - (ii) your use of a Service; or
 - (iii) a Claim against us by an End User in relation to a Service we supply to you –

except to the extent that we caused or contributed to the Loss by our negligence, breach of any Law or breach of your Customer Contract.

- (c) You indemnify us for any Loss we suffer in connection with any Claim made against us by a third party arising out of or in relation to your use of Services except to the extent that we caused or contributed to the Loss by our negligence, breach of any Law or breach of your Customer Contract.

- (d) Your obligations under this clause survive termination of your Customer Contract.

40. Your liability to us – (alleged) illegal use, etc

- (a) This clause applies where:
 - (i) your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
 - (ii) we suffer Loss or reasonably incur expenses as a result.
- (b) You must make good our Loss and reimburse our expenses on request.
- (c) You are not liable for any Loss to the extent that is caused by us.

41. Liability and our Partners

41.1 No Claims against a Partner

If:

- (a) except for this clause, you would have a Claim against a Partner arising out of or in connection with your Service or their role in its supply; and
- (b) our Partner has required us to exclude the Claim and/or we are liable to indemnify it against the Claim –

then:

- (c) you must not make the Claim;
- (d) you release our Partner from the Claim; and
- (e) you indemnify us and our Partner against any Loss we suffer if you do make the Claim.

Partner indemnity

If we are liable to indemnify a Partner against any Claim or Loss arising out of or in connection with your Service or their role in its supply, you must indemnify us against our liability to the Partner except to the extent that we caused or contributed to the Claim or Loss by our negligence, breach of any Law or breach of your Contract.

42. Maintenance and faults

42.1 Maintenance

From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

42.2 Reporting faults

- (a) You may report faults in relation to a Service or the Network by contacting our help line during its operating hours.
- (b) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment which is not part of the Network.
- (c) You must not report a fault directly to one of our Partners unless we ask you to do so.
- (d) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

42.3 *Repairing faults*

- (a) We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.
- (b) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.
- (c) You are responsible for maintaining and repairing your own equipment (except where we supplied it and you have warranty rights in relation to a fault).

42.4 *Cost of repairs*

If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

43. General power to vary your Contract

We may vary your Customer Contract from time to time. Variations do not have retrospective effect.

We shall give you reasonable notice, having regard to:

- (a) the nature of the variation; and
- (b) the means by which notice is to be provided; and
- (c) the length of time remaining before the variation is to occur; and
- (d) any other matter that is reasonably relevant –

and we may also give you Walk Away Rights as explained in clause 44.

44. Walk Away Rights

44.1 *Beneficial or neutral impact*

If a Customer Contract variation will have a beneficial or neutral impact on you:

- (a) we will not give you notice; and

(b) we will not give you Walk Away Rights.

44.2 *Variations arising from amendments by a Partner*

If:

- (a) a Partner supplies a service (**Resupply Service**) to us; and
- (b) we resupply the Resupply Service to you (either as a separate service or as part of another service); and
- (c) the Partner exercises a legal right to vary its terms of supply of the Resupply Service –

then:

- (d) we may vary your Customer Contract in accordance with the Partner's variation;
- (e) we will give you notice of the variation; and
- (f) we will give you Walk Away Rights if the variation will not have a beneficial or neutral impact on you.

44.3 *Other variations*

In any other case:

- (a) We will give you reasonable notice of the variation.
- (b) We will also offer you the right to terminate your Customer Contract within 14 days of the date of the notice without incurring charges other than:
 - (i) usage or network access charges to the date your Customer Contract ends; and
 - (ii) outstanding amounts for installation of Equipment; and
 - (iii) outstanding amounts for Equipment that is compatible with other suppliers' services; and
 - (iv) where applicable, any amount under clause 44.2–
(Walk Away Rights).

45. **When variations take effect**

Customer Contract variations take effect:

- (a) at the end of any applicable notice period; or
- (b) if no notice period applies, immediately.

46. Customer transfers to us

46.1 Obligations to your current supplier

If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.

46.2 Where we manage the churn process

- (a) In some cases, there is an industry process under which we initiate and manage the transfer of your Service from another supplier to us (**Industry Churn Process**).
- (b) Where we notify you that an Industry Churn Process is in place, by making an application for Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.

46.3 Where there is no Industry Churn Process

Unless we notify you that there is an Industry Churn Process in place, you are solely responsible for terminating your contract with and any services from your current supplier in accordance with your contract with it, which might continue to charge you until you have done so.

46.4 Charges payable to your current supplier

You must promptly pay your current supplier all amounts you owe it.

47. Transfers from us

- (a) If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
- (b) Unless you have Walk Away Rights, if you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – see clause 66.

48. Charges & payment (1): kinds of Charge

We have various kinds of Charges, including:

- (a) installation Charges eg for installing Equipment;
- (b) set up Charges eg a one-off Charge when you start on an Internet Service;
- (c) periodic Charges eg a fixed monthly Charge for an ADSL Service;
- (d) usage Charges eg a Charge per call made on a local call Service;
- (e) prepaid Charges eg a Charge for call credit on a mobile telephone service;
- (f) call connection Charges eg a Charge incurred when a telephone call connects;

- (g) miscellaneous Charges eg a Charge for providing a second copy of a bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make;
 - (h) third party Charges eg an amount we must pay to a Partner to install a second telephone line in your Service Address;
 - (i) equipment Charges eg the price of a modem we sell to you –
- and other Charges stated as part of a Plan.

49. Charges & payment (2): Prices

- (a) Subject to clause 51, our prices are as stated in your Plan.
- (b) Our current prices at any time are referred to as our 'Price List'.

50. Charges & payment (3): spot priced Services

- (a) We may designate a Service as a spot priced Service.
- (b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.
- (c) International telephone calls and international roaming are spot priced Services.

51. Varying Charges

We may vary the Charges or add new Charges from time to time in accordance with clauses 43, 44 and 45.

52. Special Promotions

- (a) We may offer Special Promotions to you, on particular terms.
- (b) The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Customer Contract.

53. Bundled Plans

- (a) We may offer a group of Services as a package (bundle) for discounted total Charges (compared to the total Charges that would apply if you acquired the same Services not as a bundle). eg We might offer bundled 'Home phone + Internet Access for \$89.95 a month' where our Charges for the individual Services would be \$99.95 a month.
- (b) Each Service in a bundle is subject to a separate but dependent Customer Contract.
- (c) If you stop acquiring any Service in a bundle:

- (i) You have 'broken' the bundle; and
- (ii) We may bill you non-discounted Charges for the remaining Service/s.

54. When we can bill

- (a) Your 'Billing Period' is the period between bills. Our standard Billing Period is monthly, but we may vary it. If we do so, we will provide you with 30 days' notice of the change in Billing Period.
- (b) We may bill a part-period eg to align your Billing Period with the first day of each month.
- (c) Subject to clause 54(d), we may bill for Charges at or after any of the following points:

<i>Type of Charge:</i>	<i>may be billed:</i>
(i) set up Charge	when you place an order
(ii) periodic Charge	one Billing Period before the start of the period it relates to
(iii) usage Charge	the end of each Billing Period
(iv) prepaid Charge	when you buy or top up a prepaid Service
(v) call connection Charge	the end of each Billing Period
(vi) miscellaneous Charge	the end of each Billing Period
(vii) third party Charge	when you place an order that will incur the Charge
(viii) Equipment Charge	when you place an order

- (d) In any case, we may bill you for any Service we have already provided.

55. Bills – General

- (a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.
- (b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- (c) If we do provide an invoice, statement or Bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

56. Recharge Billing

Where Recharge Billing applies to a Service:

- (a) The Service is supplied on a Direct Debit only basis.
- (b) At the commencement of the Service, we shall Top Up your Recharge Balance.
- (c) Charges that you incur will be billed against your Recharge Balance in accordance with these terms.
- (d) Whenever your Recharge Balance falls below your Top Up Trigger, we shall Top Up your Recharge Balance again.
- (e) You authorise us to Extract funds to make Top Ups in accordance with this clause.

57. Extra Charges for bills and information

- (a) We may charge you an extra Charge if:
 - (i) you request non-standard information about your bill or Charges, or
 - (ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.
- (b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is as notified in our Price List.
 - (i)

58. Costs of telephone Billing Enquiries

If we provide access to our billing enquiry point by telephone, you agree that standard call rates apply (including timed charges for national and mobile calls).

59. Out-of-pocket expenses

- (a) We may notify you that, in order to supply a Service, we need to incur some out-of-pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- (b) We notify you that a Partner may charge us if you report a fault and there was no such fault, or the fault lies with equipment for which the Partner is not responsible, or if you contact the Partner directly. You must pay or reimburse all such amounts.

60. GST

- (a) In this clause, terms have the same meaning as in the GST Act, unless otherwise specified.
- (b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.

- (c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any taxable supply for which that amount is paid. Otherwise:
 - (i) The consideration payable by you represents the value of any taxable supply for which payment is to be made.
 - (ii) If we make a taxable supply for a consideration, which represents its value, then you must pay to us immediately, the amount of any GST payable in respect of the taxable supply, in addition to the amount otherwise payable for the taxable supply.
- (d) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third party, the amount you must pay, reimburse or contribute will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under this clause.
- (e) We may recover any GST payable under this clause in the same manner as our Charges.

61. Late billing

- (a) We may late bill.
- (b) Some Charges in a Bill may relate to a previous Billing Period.

62. When you must pay

- (a) Where a Direct Debit or credit card arrangement applies, we may Extract payment for Charges:
 - (i) after it is billed (if we issue a Bill for the Service); or
 - (ii) after the end of the current Billing Period (if we do not issue a Bill for the Service).
- (b) If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.
- (c) In any other case, you must pay a Bill within 14 days after its Bill Date.

63. How you can Pay

- (a) If your Plan specifies 'Direct Debit only' (or similar) then:
 - (i) Direct Debit payment is a precondition to supply of Service to you.
 - (ii) We may suspend Service if Direct Debit arrangements are not maintained.

- (iii) You must not cause to be reversed any Direct Debit payment to us unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.
- (b) In any other case:
 - (i) Direct Debit is our preferred payment method and incurs no surcharges.
 - (ii) You may pay by:
 - (A) MasterCard or Visa or any other card; or
 - (B) any other payment option –we notify you that we accept for that Plan.
 - (iii) Payments made using credit cards or other payment options – except Direct Debit – may be subject to a surcharge as notified on our website or a Bill.
- (c) If any payment you make is dishonoured, we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

64. Late payment (1)

If a Bill is not paid on time:

- (a) you are in breach of your Customer Contract, and
- (b) we may also charge:
 - (i) interest at 1.5% a month from the date the Bill was due for payment until it is paid in full; or
 - (ii) a reasonable late fee; and
 - (iii) any collection fees and expenses that we incur.

65. Late Payment (2) – accounts over 60 days

If your payment is 60 days or more overdue or we otherwise consider it is reasonable to do so –

- (a) we may refer it to an external collections agency;
- (b) we notify you that our collection fees and expenses under clause 64(b)(iii) may:
 - (i) include the external agency's collection fee and/or
 - (ii) include a minimum recovery charge.

66. Early Termination Fees

The amount of an Early Termination Fee that we are entitled to charge is:

- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) otherwise:
 - (i) any amount we remain liable to pay to a third party (eg a wholesale supplier) for goods or services we cannot resell or resupply to other customers; and
 - (ii) a reasonable estimate of our lost profit as a result of early termination.

67. Billing disputes

- (a) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.
- (b) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

68. Billing for unauthorised use of your account

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of a Consumer Guarantee.

69. Billing agents

- (a) We may bill you via a billing agent (eg another company in our group).
- (b) Payment to our billing agent constitutes payment to us.
- (c) Failure to pay our billing agent constitutes failure to pay us.

70. Calls to Mobiles

- (a) Unless otherwise expressly stated, our prices for usage of mobile phones (eg calls, messaging, data transfers) are always quoted on the basis that:
 - (i) you are using the phone in New Zealand, and
 - (ii) any phone you are calling or messaging is in New Zealand.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

71. Payment for third party services

- (a) Using a Service may depend on you having goods or services supplied by third parties. For instance:
 - (i) In order to use a dial up internet Service, you must have a telephone line, and your modem will make calls using it.
 - (ii) In order to use a local call Service, you must have a suitable handset.
- (b) You are solely responsible for the costs of all third party goods and services you acquire.

72. Your cooperation

- (a) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have.
- (b) You acknowledge that we or a Partner may be required under the Telecommunications (Interception Capability and Security) Act 2013:
 - (i) to intercept communications over the Service, and
 - (ii) monitor usage of the Service and communications over it.

73. Complaints

- (a) If you have any complaints in connection with the Service (including complaints about your invoice) you should contact us first to resolve the complaint via the contact details available on our website.
- (b) We will handle your complaint in accordance with our complaints procedure. You can get information on our complaints procedure by contacting us.
- (c) You are also entitled to make a complaint to the Telecommunications Dispute Resolution to the extent we have been unable to resolve your complaint and it is covered by the New Zealand Telecommunications Forum Customer Complaints Code.
- (d) We may bill you a reasonable complaint handling Charge.
 - (i)

74. Termination & suspension by us (1): Early termination

We may terminate a Customer Contract, or suspend or restrict Service if, in relation to that or any other Customer Contract or Service:

- (a) you fail to pay us any money that is due;
- (b) you threaten not to pay us money that you owe us, or will owe us in the future;

- (c) you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement);
- (d) you are in material breach of your Customer Contract;
- (e) you are subject to an Insolvency Event;
- (f) we reasonably believe that you have vacated your Service Address without notice to us;
- (g) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm;
- (h) it becomes technically infeasible for us to continue Service;
- (i) you use a Service in a way that places unreasonable demands on our Network;
- (j) we are unable to obtain access to your Service Address as required to provide, maintain or repair the Service;
- (k) there is an emergency that warrants it;
- (l) you have told us that you no longer require the Service;
- (m) if we reasonably suspect fraud or attempted fraud involving the Service;
- (n) we suspend, become entitled to suspend, the Service, and the suspension or entitlement continues for more than a month (;
- (o) in any other circumstances stated elsewhere in our Customer Terms.

We may charge a reconnection Charge following action under this clause unless it resulted from our mistake.

75. Termination & suspension by us (2): Other events

- (a) We may terminate a Customer Contract or suspend performance of our obligations under the Customer Contract if you die or are subject to an Insolvency Event, if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Customer Contract.
- (b) We may suspend or restrict the supply Service if there are reasonable grounds for believing:
 - (i) a serious threat or risk exists to the security or integrity of the Network, or
 - (ii) the provision of the Service may cause death, personal injury or damage to property.
- (c) We may suspend or restrict Service in cases of emergency, including for the provision of support to emergency and other essential services.
- (d) We may terminate a Customer Contract or suspend or limit or vary performance of our obligations under it to comply with:

- (i) legislative or regulatory requirements, or
 - (ii) the order of a court or lawful direction of a competent authority –
- to the extent the legislative or regulatory requirements or order or direction unavoidably requires us to do so.

- (e) We may suspend, intercept or terminate a service in order to comply with a warrant or other court order, or as otherwise required or authorised by law.

76. Early termination by you

- (a) You are not entitled to simply choose to terminate a Customer Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.
- (b) Our Plans are priced on the basis that you will complete your Customer Contract.
- (c) Where you are entitled to terminate your Customer Contract early (eg because we have offered you that option following a variation to your Contract) we may bill you for:
 - (i) any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers; and
 - (ii) usage or network access charges incurred up to the date on which the Customer Contract ends.
- (d) If we agree that you may terminate it early in any other circumstances, we may bill you:
 - (i) an Early Termination Fee;
 - (ii) any applicable amounts under clause 76(e);
 - (iii) a reasonable administration Charge;
 - (iv) usage or network access charges incurred up to the date on which the Customer Contract ends; and
 - (v) any other Charge that is specified in the applicable Plan or the Price List.
- (e) Some of our Plans discount, defer or waive normal equipment or installation costs (eg include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Customer Contract under such a Plan early (and if we agree that you may do so) we may also bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

77. Termination by you

You may terminate your Customer Contract:

- (a) (except during a fixed or minimum term) – on at least 30 days' written notice, taking effect at the end of a Billing Period (eg if you give notice on 26 March, your Customer Contract ends on 30 April next); or
- (b) in any other circumstances where your Customer Contract provides for it.

78. Post-termination

If your Customer Contract ends:

- (a) Our obligations to you under that Customer Contract are at an end.
- (b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Customer Contract.
- (c) All bills are payable immediately.
- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.
- (e) Any cause of action that either of us had against the other pre-dating the termination is not affected,
- (f) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,
- (g) No other Customer Contract is affected unless we also terminate it.

Otherwise, that Customer Contract is at an end for all purposes.

79. Suspension of Service

We may suspend Service at any time, without liability and immediately and (except in the case of an emergency or your death) by reasonable notice to you, if:

- (a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Customer Contract (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
- (c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are subject to an Insolvency Event;

- (f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
- (g) we reasonably believe that you may be a credit risk in relation to the Service;
- (h) you are a natural person (ie not a company) and you die;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Service or integrity of the Network;
- (k) the Service may cause death, personal injury or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Customer Contract.

80. Charges during a period of suspension

If we suspend Service:

- (a) because of your fault or breach of your Customer Contract – you remain liable for all Charges payable under your Customer Contract during the period of suspension;
- (b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

81. Errors in our documents

- (a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Customer Contract, including any Plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- (b) You are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints.

82. Provision of Services by our Partners

- (a) If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.

- (b) If our rights and obligations under your Customer Contract are assigned or novated to our Partner in order to supply the Service directly to you, the rate plan and Charges applicable to the provision of the Service may need to be altered to the nearest applicable Partner rate plan. If this is the case, we will provide you with [30 days] notice and you will have Walk Away Rights.

83. Assignment

- (a) We may assign or novate all or part of our rights and obligations under your Customer Contract without your consent. We will tell you if we do this.
- (b) You cannot assign and have someone else perform your side of the Customer Contract as long as you first get our written approval.

84. Notices

84.1 How we give notices

Subject to clause 84.2, we may give notice to you in connection with, or as required by, our Customer Terms:

- (a) in person;
- (b) by fax;
- (c) by email;
- (d) by post;
- (e) by Instant Messaging; or
- (f) in any other way allowed by law –

or by giving you (by one of the above means) notice of the address of a web page where the notice can be read.

84.2 Form of notice

- (a) If our Customer Terms, or any Law, requires a notice to be in writing, we will give it in writing.
- (b) Otherwise, we may give a notice:
 - (i) verbally or in writing; or
 - (ii) by voice call (including an a robocall call or a recorded message that contains the notice) or, if you do not answer a voice call, by leaving voicemail.

84.3 Address or number for notices

We may direct a notice to:

- (a) a number or address that we reasonably believe to be current;
- (b) in any event, the most recent number or address that you have notified to us; and
- (c) if you are a company, your registered office.

84.4 *Time of receipt*

A notice is taken to have been received:

- (a) if we give it to you in person (including a voice call you are a party to) – at the time of delivery;
- (b) if we give it to you by voicemail during business hours in your locality – two hours later;
- (c) if we give it to you by voicemail outside business hours in your locality – at 9am on the next Business Day in your locality;
- (d) if we fax it during business hours in your locality – two hours later, subject to our fax machine receiving a successful transmission confirmation;
- (e) if we fax it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to our fax machine receiving a successful transmission confirmation;
- (f) if we email it during business hours in your locality – two hours later, subject to a 'delivery failure' message not being received;
- (g) if we email it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to a 'delivery failure' message not being received;
- (h) if we post it – at noon on the second Business Day after posting;
- (i) if we send it by Instant Message during business hours in your locality – two hours later;
- (j) if we send it by Instant Message outside business hours in your locality – at 9am on the next Business Day in your locality;
- (k) if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
- (l) if there is evidence that you received it at an earlier time – that earlier time.

85. Governing law

Your Customer Contract is governed by and must be construed in accordance with the laws of New Zealand. You and we submit to the exclusive jurisdiction of the courts of New Zealand.

86. Entire agreement

Your Customer Contract is the entire agreement between you and us regarding its subject matter, and you acknowledge that:

- (a) your Customer Contract does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it, other than a Consumer Guarantee to the extent it may not lawfully be excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Customer Contract.

87. Delays

If your Customer Contract does not fix a time within which a Service will be provided and the time is not to be determined in a way agreed between us, we shall supply it within a reasonable time and you may have rights and remedies under the Consumer Guarantees Act 1993 if we fail to do so.

88. No waiver

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Customer Contract (such as a right that we have due to your breach of your Customer Contract) does not operate as a waiver of the power or right.

89. Information about your rights

Information and advice about your rights can be obtained by contacting the New Zealand Commerce Commission.

90. Complaints and assistance services

Our contact details are available on our website.

You may contact us and make any complaint by contacting us or the following assistance services:

- (a) Customer Service – see clause 3 for the number.
- (b) New Zealand Relay Service – 0800 4 713 713 or 0800 4 715 715
- (c) Department of Internal Affairs' Translation Service – 0800 872 675

91. Commercial Electronic Messaging

- (a) Subject to this clause, we may send you commercial electronic messages regarding telecommunications goods and services, and ancillary goods and services, and you consent to us doing so.
- (b) Your consent under clause 91(a):

- (i) applies while your Customer Contract is in force and for a year afterwards; and
 - (ii) is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 9(3) of the UEMA; but
 - (iii) terminates if you give us reasonable written notice that it is withdrawn.
- (c) Any commercial electronic message we send you does not have to comply with section 11 of the UEMA.
- (d) This clause 91 survives the termination of your Customer Contract.

92. Interpreting your Customer Contract

- (a) If an expression is defined in the Dictionary in clause 93, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint blue', then 'coloured' means 'painted blue'.)
- (c) Expressions like 'includes', 'including', 'eg' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) The rule of construction known as *ejusdem generis* shall not apply, and clauses containing examples shall be construed without regard to that rule.
- (e) A provision of your Customer Contract will not be construed against a party because that party proposed or drafted it.
- (f) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (g) A schedule to a document is part of that document.
- (h) A reference to the singular includes the plural and vice versa.
- (i) There is no significance in the use of gender-specific language.
- (j) A 'person' includes any entity which can sue and be sued.
- (k) A 'person' includes any legal successor to or representative of that person.
- (l) A reference to a law includes any amendment or replacement of that law.
- (m) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (n) Anything we can do, we may do through an appropriately authorised representative.
- (o) Any matter in our discretion is in our absolute and unfettered discretion.

- (p) A reference to a document includes the document as modified from time to time and any document replacing it.
- (q) If something is to be or may be done on a day that is not a Business Day then it must be done on or before the next Business Day.
- (r) The word 'month' means calendar month and 'year' means 12 months.
- (s) The words 'in writing' include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- (t) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.
- (u) Money amounts are stated in New Zealand currency unless otherwise specified.
- (v) A reference to a 'notice' means a notice that can be read, unless stated otherwise.

93. Dictionary

Account Page means a web page or facility we may provide that permits you to view and / or manage details of your account.

Acceptable Use Policy means a policy so titled and issued under clause 11.

Application Date – see clause 23(a).

Automatic Direct Debit means a periodic payment that is automatically deducted by us from your nominated financial institution account.

Bill means an invoice from us stating Charges that you are liable to pay.

Billing Period – see clause 54(a).

Business Day – Monday to Friday excluding statutory holidays in New Zealand.

Charge means a charge applicable under your Customer Contract.

Claim means any and all claims, alleged claims, actions, suits or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising (including by way of set off, cross-claim or counterclaim).

Consumer Guarantees mean the guarantees set out in Part 1 of the Consumer Guarantees Act 1993.

Consumer Guarantees Act means the Consumer Guarantees Act 1993.

Contract Date – see clause 23(b).

Credit Management means the process by which we:

- (a) help customers to manage their expenditure on Services;
- (b) manage any credit risk to us; and
- (c) collect outstanding debts from customers and former customers.

Customer Contract – see clause 4.

Customer Terms – see clause 1.

Delivery Date – see clause 32.

Dictionary means this table of defined terms.

Direct Debit means a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit.

Early Termination Fee – see clause 66.

End User – see clause 25(b).

End User Data means any data, information or other material provided to Aatrox relating to an End User (including personal information, as such term is defined in the Privacy Act), but excludes any data, information or other material provided by you to Aatrox which is aggregated and not specifically identifiable as pertaining to a particular End User.

Equipment means a handset, modem, SIM card, router, cabling or other hardware.

Exploitative Use – see clause 28(a).

Extract means deduct an amount by Direct Debit.

Facilities means equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service.

Fair Use Policy means a policy so titled and issued under clause 11.

General Terms means the terms in Part C.

GST means goods and services tax chargeable, or to which a person may be liable, under the GST Act.

GST Act means the Goods and Services Tax Act 1985 (NZ).

Insolvency Event includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts when they are due, you are wound up or become bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction.

Instant Messaging means SMS, RCS message, iMessage, Facebook Messenger and any similar messaging service by which you and we can exchange text or voice messages.
Internet Service a Service that provides access to the Internet.

Intervening Event means an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of

our Partners, any disruption to our or our Partners' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster. Law means law, Act of Parliament, regulation, mandatory standard and industry code and including a requirement or direction of any Regulator.

Laws means any statute, regulation, statutory rule, judgment, rule of common law or equity or rule of any stock or securities exchange and includes those laws or rules as amended, consolidated or replaced, and any regulations and other subordinate instruments made under or in accordance with them, as well as any direction from any lawful authority.

Loss means losses, harm, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained actual or contingent, including but not limited to:

- (a) economic loss;
- (b) business interruption;
- (c) loss of revenue, profits, actual or potential business opportunities or contracts;
- (d) anticipated savings;
- (e) loss of profits;
- (f) loss of data;
- (g) indirect or consequential loss;
- (h) an obligation to indemnify another person;
- (i) an obligation to contribute to the compensation of loss or damage suffered by another person.

Naked DSL means a DSL Internet Service that we expressly offer on terms that you need not acquire or maintain a Standard Telephone Service using the same copper pair as the one used to supply the DSL Internet Service.

Network – see clause 24.

Numbering Plan means the New Zealand Telecommunications Numbering Plan.

Off-peak – see clause 7.

Operational Directions – see clause 14.

Our Facilities means Facilities we own and/or operate.

Partner means a third party that, under a contract with us, provides (a) access to Facilities they own, control, manage or maintain or (b) content or (c) a service – that we resupply to you.

Partner Facilities means Facilities that are managed or maintained by a Partner.

Partner Requirements – see clause 15.

PDH means personal, household or domestic.

Peak – see clause 7.

Periodic Entitlements – see clause 8.

Plan means a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service.

Prepaid Plan means a Plan where you must pay in full for Service before you use it.

Price List – see clause 49.

Privacy Act means the Privacy Act 2020 and Privacy Regulations 2020.

Privacy Policy means Aatrox's then-current privacy policy, as amended from time to time, and made available on the Aatrox website set out in clause 3.

Product means goods and / or services.

Recharge Balance means an amount we specify as the Recharge Balance from time to time.

Recharge Billing means billing in accordance with clause 56.

Regulator includes the Ministry of Business, Innovation and Employment, the New Zealand Commerce Commission and any other relevant government or statutory body or authority.

Service means a service which we provide to you, including but not limited to a Telco Service and ancillary goods or services.

Service Address means, in relation to a Service that is, or is to be, provided for use at a fixed location, the address of that location.

Service Agreement means an agreement by us to provide a Service, whether made before or after the Start Date.

Service Level Agreement means a written service quality assurance titled as such.

Service Schedule means terms and conditions that apply to particular Services, usually as set out in a document titled as such.

Service Start Date – see clause 23(c).

Site – see clause 32.

SLA means a Service Level Agreement.

Special Promotion means a special promotion we may offer from time to time, on terms we notify in connection with the offer.

Standard Telephone Service means a Telco Service provided for the purpose of voice telephony or another form of communication that is equivalent to voice telephony (for example, communication by means of a device that enables text-based communication).

Start Date – see clause 2.

Telco Act means the Telecommunications Act 2001.

Telco Goods means any goods we supply for use in connection with the supply of a Telco Service, whether or not the goods are supplied in conjunction with, or separately from, a Telco Service.

Telco Product means Telco Goods and/or a Telco Service.

Telco Service means:

- (a) a telecommunications service as defined in the Telco Act or service supplied in connection with that service; and
- (b) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a telecommunication service.

Term means from the Contract Date until your Customer Contract ends.

Top Up means an amount Extracted by Direct Debit when a Top Up Trigger is reached, being the difference between the Top Up Trigger and the required Recharge Balance.

Top Up Trigger means an amount that we specify as the specified Top Up Trigger from time to time.

UEMA means the Unsolicited Electronic Messages Act 2007.

Unsolicited Commercial Electronic Message has the meaning given to this term in the UEMA.

Use-by Date – see clause 9(b).

Walk Away Rights means the right to cancel your Customer Contract (even during a minimum or fixed term) and pay only usage or network access charges to the date your Customer Contract ends, and outstanding amounts for installation of Equipment.

We, us, etc – see clause 3.

Part D – Partner Requirements – Wholesale Suppliers

94. Partner Requirements

We notify you of the following Partner Requirements:

- (a) If our Wholesale Supplier has not been paid for a Service we have provided to you, and if you have not paid us for it, you must pay the amount you owe us to the wholesale supplier on demand.
- (b) You consent to us and our Wholesale Supplier exchanging your details and information about or in connection with your personal credit, commercial activities or commercial creditworthiness.
- (c) Our Wholesale Supplier may provide a Service that we resupply to you by means of a different carrier from time to time and as it sees fit.

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